

Before the
ILLINOIS COMMERCE COMMISSION

In the Matter of the Petition of)
SCC Communications Corp.)
for Arbitration Pursuant to Section 252(b))
of the Telecommunications Act of 1996)
to Establish an Interconnection Agreement)
with SBC Communications Inc.)

Docket No. 00-0769

**SCC COMMUNICATIONS CORP.'S OPPOSITION TO
AMERITECH ILLINOIS' MOTION
TO DISMISS PETITION FOR ARBITRATION**

Comes now SCC Communications Corp. ("SCC") and files this Response to Illinois Bell Telephone Company's ("Ameritech") Motion to Dismiss Petition for Arbitration ("Motion"). SCC rightfully seeks arbitration with Ameritech under section 252(b) of the Telecommunications Act of 1996 ("Act") and strongly urges the Illinois Commerce Commission ("Commission") to deny the Motion.

I. SCC IS A TELECOMMUNICATIONS CARRIER UNDER THE ACT.

Under the 1996 Act, a "telecommunications carrier" is "any provider of telecommunications services."¹ In its capacity as the designated 9-1-1 database manager for the State of Texas, SCC provides selective routing database management services to Public Safety Answering Points (PSAPs) throughout the state. The FCC has determined that selective routing database management is an adjunct service that falls into the "telecommunications management exception" to the definition of "information service."² As such, selective routing database

¹ 47 U.S.C. § 153(44).

² See *Bell Operating Companies Petitions for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, CC Docket No. 96-149, Memorandum Opinion and Order, 13 FCC Rcd 2627, 2638 ¶ 18 (1998) (*Forbearance Order*).

management is a telecommunications service,³ and SCC is a “telecommunications carrier” under the Act. Even if selective routing database management were not a “telecommunications service,” however, SCC is still a “telecommunications carrier” because it offers “telecommunications for a fee directly available to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.”⁴

Ameritech contends that SCC does not provide telecommunications directly to the public because Ameritech believes that: (1) SCC sells its services exclusively to carriers;⁵ and (2) sales to carriers do not constitute sales to “the public.” Ameritech is wrong on both accounts.

As discussed above, SCC does not provide services exclusively to carriers. SCC provides services to state agencies, including PSAPs. SCC also provides services to residential and business Private Branch Exchange (“PBX”) owners and telematics services providers, which are business end-users. Thus, based on Ameritech’s own legal argument, having established that SCC provides telecommunications not only to carriers, but also directly to the public, SCC is a telecommunications carrier under the Act. Even if Ameritech had not mischaracterized SCC’s services, however, Ameritech’s construction of “the public” is contrary to law.

It is well-established that telecommunications services encompass only telecommunications offered on a common carrier basis.⁶ It is also well-established that the test

³ See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *on recon.*, 12 FCC Rcd 2297 (1997), *recon. pending, petition for summary review in part denied and motion for voluntary remand granted sub nom.*, *Bell Atlantic v. FCC*, No. 97-1067 (D.C. Cir. filed Mar. 31, 1997), *petition for review pending sub nom.*, *SBC Communications v. FCC*, No. 97-1118 (D.C. Cir. filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *on remand*, 12 FCC Rcd 8653 (1997), *order on remand aff’d sub nom. Bell Atlantic Telephone Cos. v. FCC*, No. 97-1423 (D.C. Cir., Dec. 23, 1997).

⁴ 47 U.S.C. § 153(46).

⁵ *Motion* at 4-8.

for common carriage has two parts: "first, whether there will be any legal compulsion ... to serve [the public] indifferently, and if not, second, whether there are reasons implicit in the nature of [the] operations to expect an indifferent holding out to the eligible user public."⁷ This test "focuse[s] primarily upon whether the carrier holds itself out indiscriminately to serve all to whom it can 'legally and practically be of use.'"⁸

Common carriers need not, however, make their services available to the entire public.⁹ In fact, "[o]ne may be a common carrier though the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the total population."¹⁰ So long as "one ... hold[s] oneself out indiscriminately to the clientele," it is not necessary to serve the whole public to be a common carrier.¹¹ Likewise, common carriers need not provide retail services. Indeed, "the term 'telecommunications service' was not intended to create a retail/wholesale distinction," and "common carrier services 'include wholesale services to other carriers.'"¹²

⁶ See *Iowa v. FCC*, 218 F.3d 756, 759 (D.C. Cir. 2000) (hereinafter *Iowa*) (quoting *Federal-State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776, 9177 P 785 (1997)) attached hereto as Exhibit 1; see also *id.* ("a carrier that provides a service on a non-common carrier basis is not a 'telecommunications carrier'") and *Virgin Islands Telephone v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (affirming FCC's determination that a telecommunications carrier is "essentially the same" as a common carrier and that the definition of "telecommunications services" in the Act was only intended to make clear that telecommunications services are common carrier services).

⁷ *National Ass'n of Regulatory Util. Comm'rs v. FCC (NARUC I)*, 525 F.2d 630, 642 (D.C. Cir. 1976), attached hereto as Exhibit 2.

⁸ *Iowa*, 218 F.3d at 759 (citing *NARUC I*).

⁹ *NARUC I*, 525 F.2d at 641.

¹⁰ *Id.*

¹¹ *Id.* See *Iowa*, 218 F.3d at 759 (stating the "general rule that a carrier offering its services only to a legally defined class of users may still be a common carrier if it holds itself out indiscriminately to serve all within that class").

¹² *Virgin Islands*, 198 F.3d at 921, attached hereto as Exhibit 3.

Finally, a carrier does not lose common carrier status by entering into private contractual relationships with customers or by engineering customer-specific solutions.¹³

SCC offers its services to its customers indifferently via commission-approved tariffs and price lists. SCC does not differentiate among eligible users in providing its services, and SCC holds itself out indiscriminately to its clientele. Accordingly, SCC's services are provided on a common carriage basis, SCC's services are "telecommunications services," and SCC is a "telecommunications carrier" under the Act.¹⁴

Recognizing the validity of SCC's claim to telecommunications carrier status, seven state commissions and the Public Service Commission of the District of Columbia have certified SCC to provide in-state telecommunications services.^{15/} In so doing, these commissions stated

¹³ See *Indep. Data Comm. Manuf. Assoc., Inc. and AT&T Petition for Declaratory Ruling that All LXC's be Subject to the Commission's Decision on the IDCMA Petition*, 10 FCC Rcd 13717, 13724 (1995) ("Frame Relay Order") attached hereto Exhibit 4.

¹⁴ There can be no quarrel that SCC's services constitute "telecommunications." The Act defines "telecommunications" to mean "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."¹⁴ SCC aggregates and transports 9-1-1 and emergency information (voice and data) on behalf of its customers, at their direction, and between points they specify. SCC does not alter the form or content of that information in any way. Thus, SCC's services are "telecommunications" under the Act.

^{15/} Docket No. 21544, *Application of SCC Communications Corp. for a Service Provider Certificate of Operating Authority*, Order of Public Utility Commission of Texas, dated January 19, 2000; *Application of SCC Communications Corp. to Provide Telecommunications Services in Massachusetts*, filed with Department of Telecommunications & Energy on September 25, 2000; Docket No. UT-001317, *Application and Petition of SCC Communications Corp., For Registration as a Telecommunications Company and Classification as a Competitive Telecommunications Company*, Order of Washington Utilities and Transportation Commission, dated September 27, 2000; Docket No. 00A-468T, *Application of SCC Communications Corp. for a Certificate to Provide Basic Emergency Services and Notice of Intention to Exercise Operating Authority and Certificate of Public Convenience and Necessity to Provide Basic Emergency Services*, Order of Public Utilities Commission of the State of Colorado, dated September 27, 2000; Formal Case No. 892, *Application of SCC Communications Corporation to Provide Telecommunications Services in the District of Columbia*, Order of the Public Service Commission of the District of Columbia, dated November 28, 2000; *Application of SCC Communications Corp. for Authority to Provide Telecommunications Service in Oregon as a Competitive Provider*, Order of the Public Utility Commission of Oregon, dated December 12, 2000; and Docket No. 00-0606, *Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Order of the Illinois Commerce Commission, dated December 20, 2000 (hereinafter ICC Order). SCC has pending applications in 17 states.

specifically that SCC will provide “telecommunications services” as a “telecommunications provider.” Just two days ago, for example, this Commission authorized SCC to provide “telecommunications services on a facilities-based, interexchange basis” and “telecommunications services on a facilities-based local exchange basis within the State of Illinois.”¹⁶ The Texas Public Utility Commission, moreover, held that inasmuch as “the provision of selective routing ... when sold directly to the public (e.g., to public safety agencies) constitutes a ‘telecommunications service[,]’” SCC offers telecommunications services.¹⁷ In fact, the Texas Public Utility Commission went so far as to require explicitly that SCC “comply with pertinent provisions of the federal Telecommunications Act of 1996, when seeking interconnection, services, or network elements.” The Commission may take administrative notice of the final orders issued by other state regulatory bodies,¹⁸ orders which confirm SCC’s status as a provider of telecommunications services.

II. SCC OFFERS “TELEPHONE EXCHANGE SERVICE” AND PROPERLY SEEKS INTERCONNECTION PURSUANT TO SECTIONS 251 AND 252 OF THE ACT.

Under the Act, “telephone exchange service” is defined as “service within a telephone exchange, or within a connected system of telephone exchange within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange . . . or comparable service provided through a system of switches,

¹⁶ *ICC Order*, attached hereto as Exhibit 5.

¹⁷ *Texas Order* at I(30), attached hereto as Exhibit 5.

¹⁸ *See* ILL. ADMIN. CODE tit. 83, § 200.640 (2000).

transmission, equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.”¹⁹ SCC clearly meets these criteria.

SCC transports 9-1-1 and emergency call traffic to its subscribers “within a telephone exchange” through the use of transport and switching. SCC’s services also are “comparable service[s]” to telephone exchange service because they allows subscribers to “originate and terminate a telecommunications service.” Specifically, SCC’s services allow its end users to originate and terminate 9-1-1 and other emergency calls.

Ameritech seeks to confine “telephone exchange service” and “exchange access” service to local dial tone or long distance toll service.²⁰ FCC precedent, however, confirms that “telephone exchange service” and “exchange access” service are not construed so narrowly. For example, the FCC has determined that Advanced Intelligent Network (“AIN”)²¹ services and Commercial Mobile Radio Services (“CMRS”), such as broadband PCS, cellular, and covered SMR are telephone exchange services.²² In particular, the FCC noted that AIN technology represented the “cutting edge of *telephone exchange services*.”²³

The FCC also has determined that CMRS services are telephone exchange services. Specifically, the FCC held that, “at a minimum,” CMRS services are comparable to telephone exchange service because CMRS carriers provide two-way, local switched voice service.²⁴ Like

¹⁹ 47 U.S.C. § 153(47).

²⁰ *Motion to Dismiss* at p. 9.

²¹ AIN technology is network architecture used to manage network information and control call processing.

²² *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 at ¶¶ 491, 34 (rel. Aug. 8, 1996) (*Local Competition Order*).

²³ *Local Competition Order* at ¶ 491 (emphasis added).

²⁴ *Local Competition Order* at ¶ 1013.

CMRS carriers, SCC provides local, two-way switched voice traffic; thus, SCC's services are telephone exchange services under the Act.

Finally, the FCC has determined that telephone exchange service encompasses more than just traditional voice telephony. In fact, the FCC held that, rather than being limited to traditional voice telephony, telephone exchange service includes non-traditional "means of communicating information within a local area."²⁵ The FCC concluded that neither the language of the Act nor the relevant legislative history limits the definition of telephone exchange service to the provision of voice services; rather, the definition includes both voice and data services.²⁶ Accordingly, the FCC determined that DSL-based advanced services constitute telephone exchange services because they are used to provide communications among subscribers within one exchange or a connected system of exchanges.²⁷ The FCC concluded: "Indeed, in this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a central goal of the 1996 Act--opening local markets to competition to all telecommunications services."²⁸

Ameritech clearly misunderstands the nature of SCC's services. SCC plainly offers telephone exchange service and is entitled to seek interconnection and arbitration under sections 251 and 252 of the Act.

²⁵ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, CC Docket No. 98-147 at ¶ 41 (rel. Aug. 7, 1998) (hereinafter *Advanced Services Order*).

²⁶ See *Advanced Services Order* at ¶ 41.

²⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, CC Docket No. 98-147 at ¶ 20 (rel. Dec. 23, 1999) (hereinafter *Advanced Services Remand Order*).

²⁸ *Advanced Services Remand Order* at ¶ 21.

III. AMERITECH'S CONTENTION THAT SCC IS NOT A TELECOMMUNICATIONS CARRIER AND IS NOT ENTITLED TO INTERCONNECTION UNDER THE ACT SHOULD BE REJECTED AS UNTIMELY.

A. Ameritech Has Waived Any Right To Contend That SCC Is Not A Telecommunications Carrier Entitled to Interconnection.

Ameritech's behavior over the past nine months has been characterized by several constants: broken promises, failed commitments, recalcitrance, and an unwillingness to devote adequate resources and attention to SCC's request for interconnection. Perhaps the most significant constant, however, was Ameritech's tacit acceptance of SCC's status as a telecommunications carrier entitled to interconnection under the Act.

Since the start of the parties' negotiations, Ameritech has treated SCC like a telecommunications carrier and has engaged SCC in negotiations for interconnection under the Act. Indeed, just one month ago, Ameritech acknowledged in writing the parties' "ongoing negotiation of an interconnection agreement pursuant to the terms and requirements of Sections 251 and 252 of the Act."²⁹ In fact, until Ameritech filed its Motion, not one SBC-owned ILEC even suggested that SCC was not a telecommunications carrier. Ameritech may claim to have put SCC on notice that its entitlement to arbitration would be challenged,³⁰ but not one of the hundreds of pieces of correspondence sent to SCC by Ameritech and its affiliates suggest that SCC is anything other than a telecommunications carrier entitled to interconnection. Perhaps this is why Ameritech cites no evidence to support its claim.

It is far too late in the day for Ameritech to contend that SCC is not a telecommunications carrier entitled to interconnection. Ameritech waived the right to assert that position long ago.

²⁹ See Memorandum of Understanding, dated 10/18/00, at paragraph 5, provided as Attachment 29 to SCC's Petition.

³⁰ Motion at 7 n.6.

B. Ameritech's Attempt To Question SCC's Status As A Telecommunications Carrier Entitled to Interconnection Is Impermissible Bootstrapping.

Moreover, Ameritech's belated attempt to question SCC's status constitutes impermissible bootstrapping. On September 14, 2000, SCC filed a Verified Application with the Illinois Commerce Commission (the "Commission") for Certificates of Service Authority to provide local and interexchange authority to operate as a facilities-based carrier in the State of Illinois pursuant to Sections 13-403 and 13-405 of the Public Utilities Act, (the "Act") 220 ILCS 5/1-101 et seq. On October 19, 2000, pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a hearing on SCC's Application was held. Ameritech never intervened in the Application proceeding, and Ameritech failed to attend the hearing, despite notice and opportunity to do both.

The parties' interconnection negotiations were nearly six months old when SCC filed its Application, so if Ameritech truly had been concerned about SCC's status as a telecommunications carrier, the Application proceeding was the perfect and most appropriate forum in which to raise such concerns. Instead, Ameritech remained silent. Ameritech should not be permitted to raise in this proceeding contentions that it should have raised – and had every opportunity to raise – in SCC's Application proceeding. Ameritech's attempt to bootstrap those contentions to this proceeding should be rejected.

IV. AMERITECH'S MOTION TO DISMISS IS DESIGNED TO STIFLE COMPETITION.

At bottom, Ameritech's Motion is nothing more than a thinly-veiled attempt to keep SCC out of the market. Such tactics are not new for Ameritech or for any of the SBC-owned ILECs, and the regulatory landscape is replete with examples of their manipulation of the term

“telecommunications carrier” to promote their own anti-competitive agenda. Indeed, Ameritech and the other SBC-owned ILECs seem willing to promote just about any definition of the term “telecommunications carrier” – no matter how sweeping or restricted – so long as competition suffers.

For example, Ameritech and SBC have adopted a expansive definition of “telecommunications carrier” when advocating for a broader application of Universal Service Fund obligations:

- “If. . . a provider offered interstate telecommunications services through the use of underlying information services then this provider could be considered a telecommunications carrier.”³¹
- “A provider that offers a telecommunications service. . . should be considered a telecommunications carrier under the Act's section 3 definitions regardless of the technology or underlying services used to offer the telecommunications service.”³²
- “Internet service providers. . . deliver queries to and retrieve information from internet ‘addresses’ the world over. In this respect, they act like other telecommunications carriers.”³³

SBC also has advanced a broad definition of “telecommunications carrier” when advocating that cable modem service should be subject to common carrier regulation under Title II of the Act:

- “The Commission. . . must classify broadband transmission, by whatever technology, as a ‘telecommunications service.’”³⁴

³¹ Comments of SBC Communications, Inc., Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (Report to Congress) (filed Jan. 26, 1998), at 3, attached hereto as Exhibit 6.

³² *Id.*, at 2-3.

³³ Comments of Ameritech, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (Report to Congress) (filed Jan. 26, 1998), at 2, attached hereto as Exhibit 7.

³⁴ Comments of SBC Communications Inc. and BellSouth Corporation, Inquiry Concerning High Speed Access to Internet over Cable and Other Facilities, GN Docket No. 00-185 (filed Dec. 1, 2000), at 26.

Moreover, as Ameritech's Motion demonstrates, the SBC-owned IELCs also are willing to advocate a restrictive definition of "telecommunications carrier" when doing so would erect a barrier to competitive market entry. Ameritech's Motion is yet another example of SBC's manipulation of the term "telecommunications carrier" to stifle competition. The Commission should not sanction such anti-competitive behavior.

CONCLUSION

For the foregoing reasons, SCC respectfully urges the Commission to deny Ameritech Illinois' motion to dismiss SCC's petition for arbitration.

Dated: December 22, 2000

Respectfully submitted,

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CERTIFICATE OF SERVICE

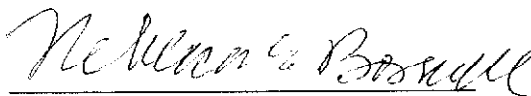
I hereby certify that I caused copies of the foregoing Response to Ameritech's Motion to Dismiss to be served on this 21st day of December, 2000, on the following persons by the indicated means:

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